

3 p.m.

Served: December 27, 1996



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 3rd day of December, 1996

Application of

CONTINENTAL AIRLINES, INC.

under 49 U.S.C. §§ 41108 and 41102 for
a certificate of public convenience and
necessity (Cleveland-London)

Docket OST 96-1642

ORDER

SUMMARY

By this order, we (1) grant Continental Airlines a certificate of public convenience and necessity to provide combination services in the Cleveland-London Gatwick market, and (2) designate the city of Cleveland as a new U.S. gateway on U.S. Route 1.

BACKGROUND

Under the current United States-United Kingdom Air Services Agreement, U.S. carriers may provide service on U.S. Route 1 from various U.S. gateways to London. Under section 6 of Annex 1 to the Agreement, certain U.S. gateway designations on U.S. Route 1 may be moved to alternative U.S. cities. By Order 96-5-36, the Department withdrew the gateway designations of Denver and Nashville, which were not being used as U.S. gateways on Route 1, and named Ft. Lauderdale as a new U.S. gateway, leaving one gateway opportunity available for new U.S.-London services.¹ Such services cannot currently be operated to London's Heathrow Airport, but they can be operated to London Gatwick.

On August 13, 1996, Continental Airlines, Inc., filed an application to provide scheduled combination services in the Cleveland-London market beginning April 1, 1997. Continental would begin operating four weekly nonstop flights on April 1 and would operate daily service between June 1 and September 30.² Continental stated that it would prefer to provide service to London Heathrow Airport, but that it is prepared to begin services at London Gatwick Airport.³

¹ In addition to Ft. Lauderdale, the other potentially switchable U.S. gateways are: Cincinnati, Newark, Raleigh/Durham, and St. Louis. All of these cities are currently receiving service to London Gatwick.

² All flights would be operated with DC-10 aircraft.

³ The carrier also requested route integration authority.

Before taking action on Continental's application, by Notice dated October 29, 1996, we invited applications from other carriers interested in using the remaining opportunity to provide services to London Gatwick from a new U.S. gateway.

PLEADINGS

Prior to the issuance of our Notice, we had received answers to Continental's application (but not competing applications) from Delta Air Lines, Northwest Airlines, United Air Lines, and the Mayor of Cleveland. We received no competing applications in response to the Notice.

Delta and Northwest object to Continental's application to the extent that it seeks authority to serve London Heathrow because there are no available rights for Cleveland-London Heathrow service under the current U.S.-U.K. bilateral agreement. Delta also states that it does not object to Continental's application to the extent that it seeks authority to serve Cleveland-London Gatwick, so long as there remains an available U.S.-London Gatwick designation under the bilateral.

United takes no position on Continental's application. United argues, however, that the Department should put Continental on notice that (1) approval of Continental's application would provide Continental no preference in any subsequent decisions involving Heathrow access issues, and (2) if Continental fails to use the authority as indicated in its application, the Department would reserve the right to reconsider its award of the route to Continental, similar to the condition the Department placed on Laker Airways's authority for service in the Ft. Lauderdale-London Gatwick market by Order 96-5-36.

The Mayor of Cleveland unconditionally supports Continental's application.

DECISION

We have decided to (1) grant Continental Airlines a certificate of public convenience and necessity to provide combination services in the Cleveland-London Gatwick market, and (2) designate the city of Cleveland as a new U.S. gateway on U.S. Route 1.⁴ Consistent with our policy with respect to limited-entry markets, we will issue a five-year experimental certificate to Continental. The certificate will include route integration authority as requested by Continental.

We find that approval of Continental's application to serve the Cleveland-London market is consistent with the public convenience and necessity.⁵ Continental's proposed services will

⁴ Based on officially noticeable data under rule 24(n) of our regulations, we find that Continental is fit to provide the proposed transportation services. The carrier has previously been found to be a U.S. citizen and fit to provide scheduled foreign transportation of persons, property, and mail. See, e.g., Order 96-10-44.

⁵ Continental has forecast, in this application, that its proposed U.S.-U.K. services will consume 11,941,500 gallons of fuel annually. Since approval of the application would result in a near-term increase in fuel consumption of more than 10 million gallons annually, approval of the application constitutes a "major regulatory action" under the Energy Policy and Conservation Act of 1975. However, we find that the additional service to be provided under this authority and the resulting

contribute to the variety of price and service options available to travelers and shippers in the Cleveland-London market. Further, the authority requested is consistent with the aviation agreement between the United States and the United Kingdom. Finally, Continental's proposed Cleveland-London Gatwick service will use valuable bilateral route rights not currently being used and would do so in circumstances where no other carrier has come forward with a competing application.

We will deny Continental's request for authority to serve London Heathrow. As discussed above, while we may authorize new U.S.-London service for London Gatwick, rights for new service to London Heathrow are not currently available. We have consistently refrained from making route awards when the rights are not available under the applicable bilateral aviation agreement, and we see no persuasive basis to deviate from that policy here. The award to Continental of London Gatwick authority is without prejudice to any subsequent award for London Heathrow authority.

Regarding United's concern about the eventual implementation of this award, we put Continental on notice that should it not introduce service as planned, we reserve the right to reconsider our decision here.

Implementation of Continental's award requires that Cleveland be designated as a U.S. gateway on U.S. Route 1. Consistent with our decision here, we will proceed with that designation.

ACCORDINGLY,

1. We issue, in the form attached, a certificate to Continental Airlines, Inc., to provide scheduled foreign air transportation of persons, property, and mail in the Cleveland-London Gatwick market;
2. To the extent not granted, we deny the requests of Continental Airlines, Inc., in Docket OST-96-1642;
3. The attached certificate will become effective 30 days after the service date of this order, subject to the extension of that date in accordance with the provisions of the certificate;
4. We will designate Cleveland, Ohio, as a new gateway on U.S. Route 1: Atlantic Combination Air Services, in Annex 1 of the U.S.-U.K. Air Services Agreement;
5. Unless disapproved by the President of the United States under 49 U.S.C. § 41307, this order shall become effective on the 61st day after its submission for § 41307 review or upon the date of advice from the President or his designee under Executive Order 12597 and implementing regulations that he or she does not intend to disapprove the Department's order under that section, whichever occurs earlier;⁶ and

public benefits outweigh any adverse effects that may be caused by the increased annual fuel consumption.

⁶ This order was submitted for § 41307 review on December 3, 1996. On December 20, 1996, we received notification that the President's designee, under Executive Order 12597 and implementing regulations, did not intend to disapprove the Department's order.

6. We will serve this order on Continental Airlines, Inc.; Delta Air Lines, Inc.; Northwest Airlines, Inc.; United Air Lines, Inc.; the Mayor of Cleveland, Ohio; the Ambassador in Washington of the United Kingdom of Great Britain and Northern Ireland; the U.S. Department of State (Office of Aviation Negotiations); and the Federal Aviation Administration (AFS-220).

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)



**Experimental Certificate
of Public Convenience and Necessity
for
Foreign Air Transportation
Route 729**

This Certifies That
Continental Airlines, Inc.

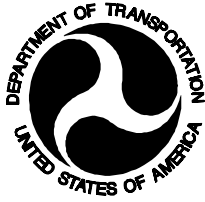
is authorized, subject to the provisions of Subtitle VII of Title 49 of the United States Code, the orders, rules, and regulations issued thereunder, and the attached Terms, Conditions, and Limitations, to engage in foreign air transportation of persons, property, and mail.

This Certificate is not transferable without the approval of the Department of Transportation.

By Direction of the Secretary

**Issued by Order 96-12-25
On December 3, 1996
Effective on January 26, 1997
Affairs**

**Charles A. Hunnicutt
Assistant Secretary for
Aviation and International**



Terms, Conditions, and Limitations

CONTINENTAL AIRLINES, INC.

is authorized to engage in foreign air transportation of persons, property, and mail:

Between Cleveland, Ohio, and London Gatwick, England.

This authority is subject to the following provisions:

- (1) The holder shall at all times conduct its operations in accordance with the regulations prescribed by the Department of Transportation for the services authorized by this certificate, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.
- (2) The holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate is subject to compliance with such treaties and agreements and with any orders of the Department of Transportation issued under them or for the purpose of requiring compliance with them.
- (3) The exercise of the authority granted here is subject to the holder's first obtaining from the appropriate foreign governments such operating rights as may be necessary.
- (4) The holder's authority under this certificate is effective only to the extent that such operations are also authorized by the Federal Aviation Administration.
- (5) The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).
- (6) The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render a certificate ineffective, and this or other failure to comply with the provisions of Subtitle VII of Title 49 of the United States Code or the Department's regulations shall be sufficient grounds to revoke this certificate.

(7) Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(n)), it must first comply with the requirements of 14 CFR 204.5.

(8) In the event that the holder does not commence actual flying operations under this certificate within one year of the date of the Department's determination of its fitness, its authority shall be revoked for dormancy. Further, in the event that the holder commences operations for which it was found "fit, willing, and able" and subsequently ceases all such operations, its authority under this certificate shall be suspended under the terms of 14 CFR 204.7 and the holder may not recommence nor advertise such operations unless its fitness to do so has been redetermined by the Department. Moreover, if the holder does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.

(9) The holder acknowledges that this certificate is granted to determine if the holder's projected services, efficiencies, methods, rates, fares, charges, and other projected results, will, in fact, materialize and remain for a sustained period of time, and to determine whether the holder will provide the innovative or low-priced air transportation it proposed in its application for authority;

(10) The holder may combine services on this certificate with all services authorized by other Department of Transportation certificates or exemptions, provided, that such operations are consistent with applicable international agreements; and provided further, that (a) nothing in the award of the route integration authority requested should be construed as conferring upon the holder additional rights (including fifth freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless the holder first notifies us of its intent to serve such a market and unless and until the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights; and (b) should there be a request by any carrier to use the limited entry route rights that are included in the holder's authority by virtue of the route integration authority granted here, but not being used, the holding of such authority by route integration will not be considered as providing any preference for the holder in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

This certificate shall become effective January 26, 1997; provided, however, that prior to the date on which the certificate would otherwise become effective, the Department, either on its own initiative or upon the timely filing of a petition for reconsideration of the order issuing this certificate, may by order or orders extend such effective date from time to time. It shall expire

Issued by
Order 96-12-25
Route # 729

five years thereafter unless the Department of Transportation earlier
suspends, modifies or deletes the authority.